

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(h),
Table of Allotments,
FM Broadcast Stations.
(Savannah, Springfield and
Tybee Island, Georgia)

)
)
)
)
)
)
)

MB Docket No. 03-119
RM-10694

JUL 21 2003

NOTICE OF PROPOSED RULE MAKING

Adopted: May 16, 2003

Released: May 20, 2003

Comment Date: July 11, 2003

Reply Comment Date: July 28, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Cumulus Licensing Corp. (Cumulus"), licensee of Stations WSIS, Springfield, Georgia and WEAS, Savannah, Georgia, requesting changes to the FM Table of Allotments. Cumulus requests the substitution of Channel 280C2 for Channel 280C3 at Springfield, Georgia, reallocation of Channel 280C2 to Tybee Island, Georgia, and the reallocation of Channel 226C1 from Savannah, Georgia, to Springfield, Georgia, as a replacement service for Channel 280C3 at Springfield. Cumulus states its intention to file applications for the channels at Tybee Island and Springfield if its proposal is granted.

2. Cumulus has requested to change the community of license for Station WSIS, Springfield, Georgia, and for Station WEAS, Savannah, Georgia, in accordance with the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ In support of its proposal, Cumulus states that each allotment is mutually exclusive with the existing allotment, its proposal results in a preferred arrangement of allotments under the Commission's priorities and local service will be retained in each community.² The reallocation of Channel 280C2 from Springfield to Tybee Island (population 3,392 people) would not deprive Springfield (population of 1,821 people) of its sole local transmission outlet, because Springfield would retain local service with the reallocation of Channel 226C1 from Savannah to Springfield. Cumulus states that Station WSIS operating on Channel 280C2 at Tybee Island at the proposed transmitter site will place a 70 dBu contour over 79% of the Savannah Urbanized Area. Currently Station WSIS covers approximately 10% of the Savannah Urbanized Area. Cumulus is providing information showing that Tybee Island is an independent

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² See *Revision of FM Assignment Policies and Procedures ("FM Allotment Priorities")*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

community, utilizing the Tuck factors.³ Cumulus states that the relocation of Station WSIS to Tybee Island will result in a net gain in population of 70,081 people and a community of 3,392 people will receive a first local service. The reallocation of Channel 280C2 from Springfield to Tybee Island will not deprive Springfield of local service as the community will continue to be served by the reallocation of Station WEAS, Channel 226C1, from Savannah to Springfield. Station WEAS will continue to operate at its current site consistent with Section 73.207 of the Commission's Rules. Therefore, there will be no loss or gain in service area. According to Cumulus, the reallocation of Station WEAS will not deprive Savannah of local service as fourteen stations will continue to provide local service to Savannah. With respect to migration of service from rural to urban areas, Cumulus states that although Savannah is the central city in the Savannah Urbanized Area, Springfield is not located in the Savannah Urbanized Area.

3. Since the reallocation proposal submitted by Cumulus is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station WSIS to specify operation on Channel 280C2 at Tybee Island, Georgia, in lieu of Channel 280C3 at Springfield, Georgia. We shall also propose the modification of the license for Station WEAS, Savannah, Georgia, to specify operation on Channel 226C1 at Springfield, Georgia. We will not entertain competing expressions of interest in the use of these channels. A staff engineering analysis confirms that the proposed allotments can be made in compliance with the Commission's spacing requirements.⁴ A staff engineering analysis indicates that the reallocation of Channel 280C2 from Springfield to Tybee Island will result in a loss of service to 36,120 people with a gain in service to 109,276 people. The loss

³ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). (Eight factor analysis for determining a proposed community's independence from a nearby urbanized area.) 1) *Extent to which the residents of Tybee Island, Georgia, work in the City of Tybee Island.* The population of Tybee Island is 3,392 people which represents an increase of 19% from the 1990 U.S. Census. According to the 2000 U.S. Census Database, 25.3% of the residents work in Tybee Island. 2) *Newspapers and other media that cover Tybee Island's needs and interests.* The *Tybee News* serves the community and surrounding area with a circulation of 7,000 copies. The City of Tybee Island maintains its own webpage providing a wide variety of facts and events for the residents. 3) *Community leaders and residents perceive Tybee Island as being separate from Savannah.* The City of Tybee Island has its own unique identity and history that are separate from that of Savannah. Tybee Island was settled in 1733 and incorporated on October 15, 1887. Tybee Island is a seaside resort including urban and commercial developments, historical landmarks and tourism. 4) *Tybee Island has its own local government and elected officials.* The government structure is a mayor, six council members and an appointed city clerk and city manager. Departments of the local government include police, public works, finance and community development. 5) *The City of Tybee Island has its own zip code and separate governmental listings in the local telephone book.* The zip code designated for Tybee Island is 31328. The U.S. Postal Service operates the Tybee Island Post Office. Residential and business listings for Tybee Island are found in the Tybee Island Telephone Directory published by Southern Bell, which contains a separate section for the Tybee Island government listings. 6) *The City of Tybee Island has its own commercial establishments and health facilities.* Tybee Island is home to a variety of businesses and commercial establishments some of which use Tybee Island in their name. Local businesses include Tybee Market, Tybee Island Cruises, Atlantic Beacon Gallery, Christy's Department Store, MacElwee's Seafood, Crab Daddy's, and numerous inns, bed and breakfast inns and hotels. Medical services are provided by Medical Clinic of Tybee and the Tybee Medical Center. There are numerous religious organizations, civic organizations and local community events. 7) *Tybee Island is a separate and distinct advertising market from Savannah.* According to the City Government, local businesses advertise in the *Tybee News* and do not rely on Savannah media sources to reach the residents of Tybee Island. 8) *Tybee Island has its own library, police and fire departments.* Tybee Island Branch Library serves the local population. St. Michael's Catholic School is located in the community. The City of Tybee Island maintains its own police and fire departments, parks and recreation services and several museums.

⁴ The coordinates for Channel 280C2 at Tybee Island, Georgia, are 32-00-45 and 80-50-44. The coordinates for Channel 226C1 at Springfield, Georgia, are 32-02-48 and 81-20-27.

and gain areas have five or more services. We further show that the while the current allotment of Channel 280C3 at Springfield covers only 8% of the urbanized area of Savannah, the proposed allotment at Tybee Island will cover 85% of the urbanized area. Cumulus has provided a *Tuck* showing establishing independence of Tybee Island from the Savannah Urbanized Area. Station WEAS will continue to provide a 70 dBu contour to 100% of the Savannah, Georgia, and the Hinesville, Georgia, Urbanized Areas from its current site which is also the site specified for allotment at Springfield, Georgia. Therefore, this relocation does not implicate the Commission's policy concerning the potential migration of stations from underserved rural areas to well-served urban areas as the station is currently serving an urbanized area and there is no change of the transmitter site.⁵

4. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Tybee Island, Georgia	----	280C2
Savannah, Georgia	226C1, 231C0, 238C1, 243C, 247C0, 271C	231C0, 238C1, 243C, 247C0, 271C
Springfield, Georgia	280C3 ⁶	226C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **July 11, 2003**, and reply comments on or before **July 28, 2003**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Petitioner's counsel, as follows:

Mark N. Lipp
Shook, Hardy & Bacon
600 14th Street, NW, Suite 800
Washington, D. C. 20005-2004

⁵ See *Elizabeth City, North Carolina and Chesapeake, Virginia*, 9 FCC Rcd 3586 (1994).

⁶ The license for Station WSIS, Springfield, Georgia, was modified from Channel 280A to Channel 280C3 in a one-step application (BPH-199903251E) which has not been reflected in the FM Table of Allotments. Upon termination of this proceeding, we shall correct the FM Table to reflect the correct class of channel.

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁷ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.